special elections are mandatory, and must be strictly obeyed. Judgment reversed. *Current et al.* v. *Luther et al.* (1904), — Ind. —, 72 N. E. Rep. 556.

§ 5341, BURNS' ANN. ST. 1901, requires the question of township appropriations in aid of the construction of railroads to be submitted to popular vote. § 5343 provides that the vote shall be conducted in the manner prescribed by law for general elections. § 6214 creates a board of election commissioners and enjoins upon them the duty of preparing and distributing ballots. § 6260 provides that the local officers shall perform the same duties with regard to the conduct of special elections as in case of general elections. Undisputed evidence showed that the ballots in the contested election were not prepared by the board of election commissioners, but by the railroad company, and turned over to election officers only on the morning of the election. The statutes regarding elections in Indiana were enacted to bring about reform in just such cases as the present one. The fact that the railroad company prepared the ballots and retained them in their possession until the day of election gives rise to a strong presumption that they gained an advantage by so doing. Since the purpose of election laws is to promote equal rights for all they should be construed carefully. In *People* v. *Schermerhorn*, 19 Barb. 540, 548, the court states that if a statute imposes a duty and gives the means of performing that duty, it must be held to be mandatory. The question as to whether a provision is mandatory depends on the fact that it is or is not of the essence of the thing required, and mere rules of proceeding are not usually prescribed except when such rules are looked upon as essential to the thing to be done. COOLEY, CONSTITUTIONAL LIMITATIONS, 114. That conditions for elections are precedent and mandatory is held in the following cases: *County of Union* v. *Ussery*, 147 Ill. 204, 207; *Parvin* v. *Wimberg*, 130 Ind. 561; *Atty. General* v. *McQuade*, 94 Mich. 439.

EVIDENCE—CONSTITUTIONAL LAW—PRIVILEGE—WITNESS.—The president of a corporation was subpœnaed to testify before the grand jury, which was investigating charges of corruption against municipal officers in a contract between the city and the corporation. He appeared, but refused to produce the books of the corporation as ordered by the subpœna duces tecum, basing his refusal to do so upon his constitutional privilege, that no witness is obliged to furnish evidence which might tend to incriminate himself. The circuit judge was of the opinion that the production of such portion of the books as his order required defendant to produce would not tend to criminate him. *Held*, no error. *In re Moser* (1904), — Mich. —, 101 N. W. Rep. 588.

It is an ancient principle of the law of evidence that a witness shall not be compelled, in any proceeding, to make disclosures or give testimony which will tend to criminate him, or to subject him to fines, penalties, or forfeitures. COOLEY, CONSTITUTIONAL LIMITATIONS (7th ed.) p. 442; GREENLEAF, EVIDENCE, § 469d; WHARTON, CRIMINAL EVIDENCE, § 463. This proposition is uniformly stated by all text-writers on the subject, and is supported by judicial authority in all the states and in England. In addition to the many authorities cited in the principal case, we add: *Minters* v. *People*, 139 Ill. 363; *McKnight* v. *U. S.*, 115 Fed. Rep. 972; *Kanter* v. *Clerk*, 108 Ill. App. 287; *People* v. *O'Brien*,

176 N. Y. 253; *Ex parte Cohen,* 104 Cal. 524; *Ivy* v. *State* (1904), — Miss. —, 36 So. Rep. 265; *Ex parte Reynolds,* L. R. 20 Ch. D. 294. The privilege is available in all kinds of legal proceedings: *Kanter* v. *Clerk,* supra; before pension board, *U. S.* v. *Bell,* 81 Fed. Rep. 830; before Interstate Commerce Commission, *Counselman* v. *Hitchcock,* 142 U. S. 547; before legislative bodies, *Emery's Case,* 107 Mass. 172. The privilege is guaranteed by federal and state constitutions, and is therefore a constitutional immunity, the violation of which renders the judgment of the court void for want of jurisdiction. BROWN, JURISDICTION, § 97 (2nd ed.). Under statutes enacted in many states, granting immunity to a witness testifying to facts which may have a tendency to criminate him, it is generally held that the privilege exists in the immunity, but that the witness must testify or be subject to contempt proceedings. *People* v. *O'Brien,* supra; *Brown* v. *Walker,* 161 U. S. 591; *Bedgood* v. *State,* 115 Ind. 275. The immunity afforded must, however, be co-extensive with the constitutional provision; it must afford absolute immunity against future prosecutions for the offence to which the question relates. *Counselman* v. *Hitchcock,* supra; *Brown* v. *Walker,* supra; *Emery's Case,* supra; *People* v. *Butler St. Foundry,* 201 Ill. 236; *Bradley* v. *Clark,* 133 Cal. 196. It is undoubtedly the correct rule that it is for the court to determine whether or not any direct answer will furnish evidence against the witness. But if the fact of the witness being in danger be once made to appear, great latitude should be allowed him in judging for himself of the effect of any particular question. *Ex parte Reynolds,* supra; *Regina* v. *Boyes,* 1 B. & S. 311; *Minters* v. *People,* supra; *Miskimmins* v. *Shaver,* 8 Wy. 392; *Ex parte Senior,* 37 Fla. 1. "In such a case the witness must himself judge what his answer will be, and if he say, on oath, that he cannot answer without accusing himself, he cannot be compelled to answer." 1 *Burr's Trial,* 245, Federal Cases No. 14692e; *Warner* v. *Lucas,* 10 Ohio, 336; *Chamberlain* v. *Wilson,* 12 Vt. 491. It is said that the privilege is based upon two grounds, one of policy and one of humanity: "Of policy, because it would force a witness under a strong temptation to commit perjury; and of humanity, because it would be to extort a confession by duress, every species of which the law abhors." STARKIE, EVIDENCE, §§ 40, 41 (10th ed.). It has been urged against the privilege of the witness to refuse to answer under oath, that it would put the administration of the criminal law into the hands of the witnesses. This seems a pessimistic view to take of the possible results of a principle which long antedated our constitution, and from which no such disastrous results have ensued. It should be liberally construed in favor of the witness, and we believe "the cases of fancied necessity, if there were any relaxation of the principle, would undoubtedly multiply under the pressure of officers and others naturally, and often very properly, eager for convictions, much more rapidly than the cases where the privilege is claimed have done under a full and complete, but just and careful, enforcement of the constitutional right." No statute of immunity exists in Michigan and it would seem the privilege was absolute. But in the principal case, it seems to us, that the court has unwarrantedly denied the privilege to the defendant and has based its opinion on testimony, wherein there lurks a doubt that it might not furnish a link in the chain of evidence

which might tend to incriminate him. In the principal case, a vigorous dissenting opinion was filed by MOORE, Ch. J. For exhaustive articles on the subject, see *22 Am. Law Reg.* (N. S.), 21; 15 *Harvard Law Review,* 610; 75 Am. St. Rep. 318, 347.

EVIDENCE—PRESUMPTION—SUICIDE.—Plaintiff as trustee for First National Bank, to which the policy had been assigned by the assured, sued defendant company to recover the money payable by the terms of the policy. It was urged in defense, by way of avoidance, that under a condition of the policy, said policy was to be void if the assured committed suicide, and that he did commit suicide. The assured came to his death as the result of taking an overdose of cyanide of potassium, but whether accidentally or with suicidal intent was not clear. The trial court instructed the jury that the presumption of law, when death may have resulted from accident or suicide, is against the latter. *Held,* no error. *Ross-Lewin et al.* v. *Germania Life Ins. Co.* (1904), — Colo. App. —, 78 Pac. Rep. 305.

When the dead body of the assured is found under such circumstances and with such injuries that the death may have resulted from negligence, accident, or suicide, the presumption is against suicide as contrary to the general conduct of mankind, a gross moral turpitude not to be presumed in a sane man. MAY, INSURANCE, § 325. The foregoing doctrine, followed in the principal case, is well and uniformly settled by judicial authority, and is therefore no longer open to controversy. *Travelers Ins. Co.* v. *McConkey,* 127 U. S. 661; *Standard Life & A. Ins. Co.* v. *Thornton,* 100 Fed. Rep. 582; *Cox* v. *Royal Tribe,* 42 Ore. 365; *Mutual Life Ins. Co.* v. *Wiswell,* 56 Kan. 765; *Travelers Ins. Co.* v. *Rosch,* 23 Ohio Cir. Ct. Rep. 491; *Union Casualty & Surety Co.* v. *Goddard* (1903), — Ky. —, 76 S. W. Rep. 832. In *Mutual Benefit Life Ins. Co.* v. *Davies' Ex.,* 87 Ky. 541, occasionally cited as contra, the court refused to extend the presumption to one concededly insane. The presumption contemplates only sane, and not insane, persons. The presumption is, however, a rebuttable one and is overcome by proof of circumstances pointing to and consistent with the theory of suicide and inconsistent with any other reasonable theory, particularly where all the reasonable probabilities are in favor of suicide. *Agen* v. *Metropolitan Life Ins. Co.,* 105 Wis. 217; *Dennis* v. *Mutual Life Ins. Co.,* 84 Cal. 570; *Rens* v. *N. W. Mutual Assn.,* 100 Wis. 266; *Sovereign Camp* v. *Haller,* 24 Ind. App. 108. A presumption of suicide cannot be indulged in as a mere presumption without any facts or circumstances upon which it can logically be predicated. *Sorenson* v. *Menasha P. & P. Co.,* 56 Wis. 338. But it is only essential that the evidence preponderates against the presumption of accident. *Bachmeyer* v. *Mutual Reserve Fund Life Ins. Co.,* 87 Wis. 325, 337. The principal case is no doubt correctly decided, but it is, as it seems to us, certainly a "line" case. The propriety of allowing the presumption in each case depends upon the circumstances thereof, the question being: Are the facts proven such as exclude any other reasonable inference than that the assured voluntarily took his own life? In the principal case the facts proven did not exclude any other reasonable inference than that of suicide, and the court adopted the theory that the deceased came to his death from natural rather than from suicidal causes.